

STEVE FOSTER
ELMER BREWSTER

IBLA 81-171

Decided July 28, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring the silver Dollar #1 through #6 lode mining claims null and void ab initio. N MC 120300 through N MC 120305.

Affirmed.

1. Mining Claims: Determination of Validity -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

A mining claim located on land previously withdrawn from appropriation under the mining laws for an Indian reservation is null and void ab initio.

APPEARANCES: Steve Foster and Elmer Brewster, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Steve Foster and Elmer Brewster, appeal from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated November 3, 1980, declaring the Silver Dollar #1 through #6 lode mining claims (N MC 120300 through N MC 120305), located on June 28, 1975, null and void ab initio because the claims were located on lands not open to mineral entry.

Appellants assert in their statement of reasons for appeal that they were not aware of any act which closed the lands. Appellants also contend that they had permission to mine on the withdrawn lands stating: "In 1975 we went to the tribe for written permission wanting to be completely legal as possible. We were granted legal permission by letter at this time." Appellants go on to explain how fires destroyed the written evidence of this "permission," asserting however that there were witnesses who saw and presumably could verify its existence.

The location notices filed with BLM pursuant to section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), on October 20, 1979, indicated that the claims were located June 28, 1975, in sec. 3, T. 12 N., R. 30 E., Mount Diablo meridian, Nevada. Records in the case file disclose that the lands in sec. 3, T. 12 N., R. 30 E., were withdrawn, by the Act of March 3, 1928, ch. 120, 45 Stat. 160, "from entry, sale, or other disposition and set aside for the use and benefit of the Indians of the Walker River Reservation."

[1] Under the terms of the statutory withdrawal in 1928 the land was not available for entry and location of mining claims thereafter. Where a mining claim is located on land previously withdrawn from appropriation under the mining laws, an attempt to locate a mining claim on such land is a nullity and the claim is properly declared null and void ab initio. Marvin Mack, 51 IBLA 30 (1980); Jack C. Franks, 49 IBLA 162 (1980); Leo J. Kottas, 73 I.D. 123 (1966), aff'd sub nom. Lutzenheiser v. Udall, 432 F.2d 328 (9th Cir. 1970). This decision is without prejudice to any rights to the minerals in the subject lands which appellants may have obtained from Indian authorities with jurisdiction over the lands.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals, by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

